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December 1, 2010

Docket Control  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007

Attn: Kiana M. Sears, Executive Consultant I

RE: Filing of CCR's and Amended CCR'S for Kayenta Estates  
Docket Control Number: W-20704A-09-0467

Dear Ms. Sears:

Enclosed for filing, please find a copy of the recorded Declaration of Establishment of Covenants, Conditions and Restrictions and the Amendment to such CCR's.

If you have any questions or additional information is needed, please call.

Thank you for your assistance with this matter.

Very truly yours,

ANN P. ROBERTS

Arizona Corporation Commission

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## KAYENTA ESTATES

# AMENDMENT TO THE DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS

The undersigned, being first duly sworn upon oath, depose and say:

THIS AMENDMENT TO THE DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS, executed the 14<sup>th</sup> day of December, 2009, is hereby made on this 5<sup>th</sup> day of February, 2010, as hereinafter set forth, by JOHN J. SCULLY, hereinafter "Declarant".

### WITNESSTH:

WHEREAS, Declarant is the sole owner of Lot Nos. 1 through 27 of Kayenta Estates subdivision, recorded on the 26<sup>th</sup> day of March, 2008, in Book 15, pages 95 through 95 E, Records of Cochise County, State of Arizona; and,

WHEREAS, on the 14<sup>th</sup> day of December, 2009, Declarant executed certain restrictive covenants, conditions and restrictions to be applied upon conveying said real property; and,

WHEREAS, the Declarant hereby wishes to amend Article II. of said Declaration of Covenants, Conditions and Restrictions executed on the 14<sup>th</sup> day of December, 2009.

NOW THEREFORE, Declarant hereby amends Article II, entitled "Membership and Voting Rights" as set forth in the "Declaration of Covenants, Conditions and Restrictions executed on the 14<sup>th</sup> day of December, 2009", to read as follows:

## ARTICLE II. MEMBERSHIP AND VOTING RIGHTS

### I. ASSOCIATION VOTING RIGHTS FOR GENERAL MEMEBERSHIP:

Section 1. Every Owner of a Lot that is subject to assessment by the Association shall be a General Member of the Association. General Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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Section 2. The General Members of the Association shall be of two classes:

Class A Member(s). Class A General Members shall be any Owner(s) other than the Declarant and shall be entitled one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be General Members and the one (1) vote for such Lot shall be exercised as they determine. In no event shall more than one (1) vote be cast with respect to any one (1) Lot.

Class B Member(s). The Declarant shall be the Class B General Member(s) and shall be entitled to twenty (27) votes for each Lot owned. Declarant's Class B general membership shall cease and be converted to Class A general membership on the happening of either of the following events, whichever occurs earlier:

a. The Class B general membership shall cease and be converted to Class A general membership at such time as the total votes outstanding in the Class A general membership exceeds the total votes outstanding in the Class B general membership; or,

b. On December 31, 2020.

Section 3. At all meetings of General Members, each General Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the General Member of his Lot.

## **II. ASSOCIATION VOTING RIGHTS FOR SPECIAL MEMBERSHIP:**

Section 1. Every Customer of the Kayenta Estates Water System shall be subject to assessment by the Association and shall be a Special Member of the Association and Special Membership in the Association shall be solely restricted to the customers of the Kayenta Estates Water System.

Section 2. The Special Members of the Association shall be the only members of the Association entitled to vote upon any matters relating to the Kayenta Estates Water System. Special membership shall be entitled to one (1) vote per customer account connected to the water system.

Section 3. Special Members voting rights shall automatically cease upon cessation of the customer account by the Special Member.

Section 4. At all meetings of Special Members, each Special Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon cessation of the customer account by the Special Member.

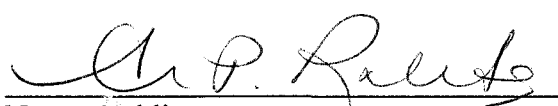
FURTHER, Declarant, by the amendment hereby reaffirms the "Declaration of Covenants, Conditions and Restrictions executed on the 14<sup>th</sup> day of December, 2009" and the "Hidden Valley Declaration of Establishment of Conditions, Reservations and Restrictions", recorded as document number 0209-27692, Records of Cochise County, State of Arizona.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this 5<sup>th</sup> day of February, 2010.

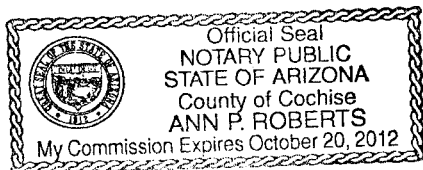
  
\_\_\_\_\_  
JOHN J. SCULLY, Declarant

STATE OF ARIZONA       )  
                                  )ss:  
County of Cochise       )

The foregoing Declaration was subscribed and sworn to before me this 5<sup>th</sup> day of February, 2010, by JOHN J. SCULLY.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:



**KAYENTA ESTATES**

**DECLARATION OF ESTABLISHMENT  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

The undersigned, being first duly sworn upon oath, depose and say:

THIS DECLARATION, made on the date hereinafter set forth, by JOHN J. SCULLY, hereinafter "Declarant".

**WITNESSTH:**

WHEREAS, Declarant is the sole owner of Lot Nos. 1 through 27 of Kayenta Estates subdivision, recorded on the 26<sup>th</sup> day of March, 2008, in Book 15, pages 95 through 95 E, Records of Cochise County, State of Arizona, which is more particularly described in Exhibit "A" attached; and,

WHEREAS, Declarant upon conveying said real property desires to subject the same to certain restrictive covenants, conditions and restrictions as set forth; and,

WHEREAS, Declarant, by this DECLARATION, hereby reaffirms the "Hidden Valley Declaration of Establishment of Conditions, Reservations and Restrictions", recorded as document number 0209-27692, Records of Cochise County, State of Arizona.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having right, title or interest in the described properties or any part there, their heirs, successors and assigns, shall inure to the benefit of each owner thereof.

**ARTICLE I.  
DEFINITIONS**

Section 1. "Association" shall mean and refer to **Kayenta Estates Homeowner's Association, Inc.**, an Arizona nonprofit corporation, its successors and assigns.

Section 2. "Property" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions for **Kayenta Estates** subdivision, Lot No. 1 through 27, according to the Record of Survey recorded on March 26, 2008, at Book 15, page 95 through 95(E) of Maps and Plats, Records of Cochise County, State of Arizona.

Section 3. "Common Property" shall mean the **Kayenta Estates Water System** and all real property, including that part of each Lot or Excluded Parcel which is burdened by an easement or easements in favor of the Association, which is maintained by the Association for the common use and enjoyment of the Owners and occupants of the Properties pursuant to the Declaration.

Section 4. "Lot" shall mean and refer to Lots shown on the Record of Survey.

Section 5. "Excluded Parcel" shall mean and refer to those parcels of real property adjacent to the Subdivision but not included therein on the Record of Survey.

Section 6. "Parcel" shall mean and refer to any Lot or Excluded Parcel.

Section 7. "Record of Survey" shall mean and refer to the record of survey recorded March 26, 2008, at Book 15, page 95 through 95(E) of Maps and Plats, Records of Cochise County, State of Arizona, as hereafter amended or revised.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Parcel which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Declarant" shall mean and collectively refer to the Developer of the Kayenta Estates subdivision identified as the Declarant in this Declaration, and his successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 10. "Member" shall mean and refer to those persons entitled to membership in the association, as provided in the Declaration.

Section 11. "Kayenta Estates Water System" shall refer to the water system established by the Association for the purpose of providing water service to the property which consists of Lot No. 1 through 27.

Section 12. "Customer of the Kayenta Estates Water System" every Lot Owner within the subdivision shall be a Member of the Association and customer of the water system.

Section 13. "Service Area of the Kayenta Estates Water System" the service area of the water system shall be limited to the fixed territory of the Property which is not within the water service area of any municipal utility or public service corporation.

## **ARTICLE II. MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner of a Lot that is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Members of the Association shall be of two classes:

Class A Member(s). Class A Members shall be any Owner(s) other than the Declarant and shall be entitled one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members and the one (1) vote for such Lot shall be exercised as they determine. In no event shall more than one (1) vote be cast with respect to any one (1) Lot.

Class B Member(s). The Declarant shall be the Class B Member(s) and shall be entitled to twenty (27) votes for each Lot owned. Declarant's Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

a. The Class B membership shall cease and be converted to Class A membership at such time as the total votes outstanding in the Class A membership exceeds the total votes outstanding in the Class B membership; or,

b. On December 31, 2020.

Section 3. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

Section 4. Membership in the Association shall be restricted to the customers of the Kayenta Estates Water System as determined by Lot Ownership within the Property.

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### ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation Assessments. The Declarant for each Lot owned within the property, hereby covenants, and each Owner of any Lot, by acceptance of a deed thereof, whether or not is shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- a. Annual assessments or charges; and,
- b. Special assessments for capital improvements, such assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each and such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the association shall be used exclusively to promote the health, safety and welfare of the residents in the property and for the improvement, liability and casualty insurance, and maintenance of the Common Property facilities thereon and the Kayenta Estates Water System.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the **maximum** annual assessment shall be Five Hundred and 00/100 Dollars (\$500.00) per Lot. No Lot shall be assessed until the water service is provided to said Lot.

a. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership.

b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above fifteen percent (15%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.



c. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 or 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty percent (60%) of all the votes in each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and will be collected on a monthly or yearly basis in advance as established by the Board of Directors.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Properties. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of 10 percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may

waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE VI. ADDITIONAL RESTRICTIONS

Section 1. Re-subdivision. No lot or lots as shown hereon shall again be subdivided, re-subdivided, altered or changed so as to produce less area than hereby established.

Section 2. Service Area of the Kayenta Estates Water System. The service area of the water system shall be limited to the fixed territory of the Property which is not within the water service area of any municipal utility or public service corporation.

Section 3. Ownership of the Kayenta Estates Water System Assets. All assets of the Kayenta Estates Water System shall belong to and shall be operated, maintained and controlled by the Association.

Section 4. Applications for Adjudication as a Not a Public Service Corporation. No applications requesting designation as not a public service corporation for the operation of the water system shall be made by the Association to the Arizona Corporation Commission without approval of fifty one percent (51%) or more of the existing Members of the Association.

## ARTICLE V. GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

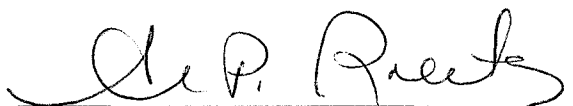
Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, and thereafter by an instrument signed by not less than sixty-seven percent (67%) of the Lot Owners. Any amendment must be recorded.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this 14<sup>th</sup> day of December, 2009.

  
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JOHN J. SCULLY, Declarant

STATE OF ARIZONA       )  
                                      )ss:  
County of Cochise       )

The foregoing Declaration was subscribed and sworn to before me this 14<sup>th</sup> day of December, 2009, by JOHN J. SCULLY.

  
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Notary Public

My Commission Expires:

